

Aug 26, 2019

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ANTHONY M. MESSNER,

Petitioner,

v.

JEFFREY A. UTTECHT,

Respondent.

No. 2:19-cv-00241-SMJ

**ORDER SUMMARILY
DISMISSING HABEAS CORPUS
PETITION**

Petitioner Anthony M. Messner, a prisoner at the Coyote Ridge Corrections Center, submitted a *pro se* Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus By a Person in State Custody, ECF No. 1. The petition consisted of only eight pages and asserted no grounds for federal habeas relief. *Id.* On July 17, 2019, Petitioner presented a forty-seven-page amended petition asserting his grounds for relief. ECF No. 3. The \$5.00 filing fee was paid on July 18, 2019.

EXHAUSTION REQUIREMENT

Petitioner challenges his 2019 Spokane County conviction, at the conclusion of a jury trial, for three counts of first degree rape of a child and one count of first degree child molestation. He was sentenced on April 4, 2019 to 318 months' incarceration. Petitioner indicates that he did not appeal from the judgment of

conviction. ECF No. 3 at 3.

Throughout his grounds for relief, Petitioner argues that the state of Washington has no jurisdiction to decide federal constitutional matters. *Id.* at 6–13. It has long been settled that state courts are competent to decide questions arising under the U.S. Constitution. *See Baker v. Grice*, 169 U.S. 284, 291 (1898) (“It is the duty of the state court, as much as it is that of the federal courts, when the question of the validity of a state statute is necessarily involved, as being in alleged violation of any provision of the federal constitution, to decide that question, and to hold the law void if it violate that instrument.”); *see also Worldwide Church of God v. McNair*, 805 F.2d 888, 891 (9th Cir. 1986) (holding that state courts are as competent as federal courts to decide federal constitutional matters). Petitioner’s arguments to the contrary are meritless.

Additionally, before a federal court may grant habeas corpus relief to a state prisoner, the prisoner must exhaust the state court remedies available to him or her. 28 U.S.C. § 2254(b); *Baldwin v. Reese*, 541 U.S. 27 (2004). Exhaustion generally requires that a prisoner give the state courts an opportunity to act on his or her claims before he or she presents those claims to a federal court. *O’Sullivan v. Boerckel*, 526 U.S. 838 (1999). A petitioner has failed to exhaust a claim for relief when he or she has a right to raise the claim by an available procedure under state law. *See id.*; 28 U.S.C. § 2254(c).

1 To meet the exhaustion requirement, the petitioner must have “fairly
2 present[ed] his claim in each appropriate state court (including a state supreme court
3 with powers of discretionary review), thereby alerting that court to the federal
4 nature of the claim.” *Baldwin*, 541 U.S. at 29; *see also Duncan v. Henry*, 513 U.S.
5 364, 365–66 (1995). A petitioner fairly presents a claim to a state court by
6 describing the factual or legal bases for that claim and by alerting the state court “to
7 the fact that the . . . [petitioner is] asserting claims under the United States
8 Constitution.” *Duncan*, 513 U.S. at 365–66; *see also Tamalini v. Stewart*, 249 F.3d
9 895, 898 (9th Cir. 2001). Mere similarity between a claim raised in a state court and
10 a claim in a federal habeas corpus petition is insufficient. *Duncan*, 513 U.S. at 365–
11 66.

12 Furthermore, to fairly present a claim, the petitioner “must give the state
13 courts one full opportunity to resolve any constitutional issues by invoking one
14 complete round of the State’s established appellate review process.” *O’Sullivan*,
15 526 U.S. at 845. Once a federal claim has been fairly presented to the state courts,
16 the exhaustion requirement is satisfied. *See Picard v. Connor*, 404 U.S. 270, 275
17 (1971). It appears from the face of the petition and the attached documents that
18 Petitioner has not exhausted his state court remedies as to each of his grounds for
19 relief. *See* ECF No. 3. Indeed, Petitioner affirmatively represents that he did not
20 exhaust his state court remedies. *Id.* at 3.

1 **GROUNDS FOR FEDERAL HABEAS CORPUS RELIEF**

2 Petitioner asserts that the Washington State Constitution contradicts the U.S.
3 Constitution regarding the Fifth Amendment right to “presentment or indictment of
4 a Grand Jury.” *Id.* He claims “no bill of indictment” was brought against him,
5 rendering his arrest, conviction, and imprisonment illegal. *Id.*

6 Petitioner seems to argue that because the state courts have defied “federally
7 established procedures and processes for the adjudication of crimes,” only “a court
8 of federal jurisdiction” has jurisdiction over his claims. *Id.* His bald assertion that
9 “due process of the law was ignored” is unsupported by his factual allegations. *Id.*

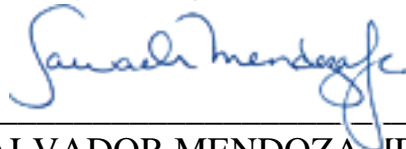
10 As the U.S. Supreme Court held long ago, “Prosecution by information
11 instead of by indictment is provided for by the laws of Washington. This is not a
12 violation of the Federal Constitution.” *See Gaines v. Washington*, 277 U.S. 81, 86
13 (1928). There is no federal constitutional violation when a prosecuting attorney’s
14 criminal information is substituted for a grand jury’s indictment. *See Hurtado v.*
15 *California*, 110 U.S. 516 (1884) (rejecting the claim that an indictment is essential
16 to due process of law and that a state violates the Fourteenth Amendment by
17 prosecuting a defendant by criminal information). Petitioner’s assertions to the
18 contrary presented in his four grounds for federal habeas corpus relief are legally
19 frivolous.

20 Because it plainly appears from the petition and accompanying documents

1 that Petitioner is not entitled to relief in this Court, **IT IS ORDERED** that the
2 operative petition, ECF No. 3, is **DISMISSED** pursuant to Rule 4 of the Rules
3 Governing Section 2254 Cases in the United States District Courts.

4 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order,
5 enter judgment, provide copies to Petitioner, and close the file. The Court certifies
6 that, pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could not be
7 taken in good faith and there is no basis upon which to issue a certificate of
8 appealability. *See* 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A certificate of
9 appealability is therefore **DENIED**.

10 **DATED** this 26th day of August 2019.

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12 SALVADOR MENDOZA, JR.
13 United States District Judge
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